

**1786 POSSESSING AN ARTICLE WITH INTENT TO DELIVER IT TO AN
INMATE — § 302.095(2)(a)(1)**

Statutory Definition of the Crime

Section 302.095(2)(a)(1) of the Wisconsin Statutes is violated by a person who possesses any article¹ with intent to deliver it to an inmate confined in a [jail] [prison] contrary to the rules or regulations and without the knowledge or permission of the [sheriff or keeper of the jail] [warden or superintendent of the prison].

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed an article.

[“Possessed” means that the defendant knowingly² had actual physical control of an article.]³

2. The defendant intended to deliver the article to an inmate confined in a [jail]⁴ [prison].

3. The (delivery) of the article was contrary to the rules or regulations and without the knowledge or permission of the (sheriff or other keeper of the jail) (warden or superintendent of the prison).⁵

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI Criminal 1786 was originally published in 1996 and revised in 2007. This revision was approved by the committee in October 2021; it reflects changes made by 2019 Wisconsin Act 111 [effective date: March 1, 2020].

This instruction is for the type of violation of § 302.095(2) (a)(1) concerning possessing and article with intent to deliver to an inmate. The offense is a Class I felony. For violations of § 302.095(2)(a)(1) concerning delivery of an article to an inmate, see Wis JI-Criminal 1785. For violations of § 302.095(2)(a)(3) concerning the receipt of an article from an inmate for conveyance out of the jail, see Wis JI-Criminal 1787. For violations concerning an inmate possessing an article with intent to retain, see Wis JI-Criminal 1784. The statute was amended by 1995 Wisconsin Act 437 to apply to jails as well as to prisons.

§ 302.095(2)(a)2 prohibits depositing or concealing an article in or about a jail or prison or in a vehicle going into jail or prison premises. There is not a uniform instruction for violation of sub (2)(a)2.

1. The statement of the offense omits the following language from the statute: “with intent that any inmate confined in the jail or prison shall obtain or receive the same. . .” The Committee concluded that it is redundant to say “possess an article with intent to deliver it and with intent that an inmate receive it.” The intent to deliver covers both concepts.

2. Inherent in the legal definition of “possession” is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927), Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927).

3. The definition of “possess” is that found in Wis JI-Criminal 920 and requires “actual physical control.” That instruction also contains the following optional paragraphs for use where the object is not Wisconsin Court System, 2021

(Release No. 59)

in the physical possession of the defendant or where possession is shared with another:

[An item is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item.]

[It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.]

[Possession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control.]

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to “possession” in criminal cases, including so called constructive possession.

4. Section 302.095(1) provides that “‘jail’ means any of the following:

- (a) A jail, as defined in s. 302.30.
- (b) A house of correction.
- (c) A Huber facility under s. 303.09.
- (d) A lockup facility, as defined in s. 302.30.”

5. Previous versions of this instruction required that the defendant have knowledge that the delivery of an article to an inmate was contrary to the rules or regulations and without the knowledge or permission of the sheriff or other keeper of the jail. The Committee concluded 2019 Wisconsin Act 111 amended § 302.095(2)(a)(1) so that the statute no longer includes the knowledge requirement for this element.